No. 16-4096

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 13, 2017
DEBORAH S. HUNT, Clerk

DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY AND ITS DIVISION OF INVESTMENT, On Behalf of Itself and All Others Similarly Situated,

Plaintiff-Appellee,

v.

CLIFFS NATURAL RESOURCES INC., et al.,

Defendants-Appellees,

v.

JEFF M. BROWN,

Movant-Appellant.

O R D E R

1:14cv1031 - DAP

Before: COLE, Chief Judge; BOGGS and MOORE, Circuit Judges.

This matter is before the court upon consideration of the motions filed by the Department of the Treasury of the State of New Jersey and its Division of Investment (1) to dismiss the appeal for lack of jurisdiction, for failure to prosecute, and for failure to post an appeal bond and (2) to expedite a decision. Appellant Jeff M. Brown has not filed a response to the motions.

The underlying federal securities class action, brought on behalf of purchasers of publicly traded stock of Defendant Cliffs Natural Resources, Inc., was settled on March 10, 2016. On March 11, 2016, the district court preliminarily approved the settlement, authorized dissemination of notice of the proposed settlement to class members, provided class members with an opportunity to exclude themselves from the settlement or to object to the proposed settlement, and scheduled a final approval hearing for June 30, 2016.

Brown was the only class member to file an objection to the settlement. On June 30, 2016, the district court held the final settlement hearing and entered the following orders: (1) an order and final judgment approving the settlement; (2) an order approving a plan of allocation of net settlement funds; and (3) an order awarding attorneys' fees and reimbursement of litigation expenses. Brown did not attend the hearing. On August 1, 2016, Brown filed a notice of appeal that designated the Court of Appeals for the Eighth Circuit as the court to which he was taking the appeal. The Eighth Circuit directed Brown to show cause why his appeal should not be dismissed for lack of jurisdiction, and Brown failed to respond. By order entered on September 15, 2016, the Eighth Circuit dismissed Brown's appeal for lack of jurisdiction. On September 21, 2016, Brown filed an "amended notice of appeal" designating this court as the court to which he was taking the appeal and seeking to appeal the three orders entered by the district court on June 30, 2016. The appeal was docketed as No. 16-4096, the current appeal.

We lack jurisdiction over appeal No. 16-4096. Pursuant to Federal Rule of Appellate Procedure 4(a)(1), a notice of appeal from the orders and final judgment entered on June 30, 2016 was due to be filed no later than August 1, 2016. Because Brown's notice of appeal was filed on September 21, 2016, it is untimely. Compliance with Federal Rule of Appellate Procedure 4(a) is a mandatory prerequisite that this court may neither waive nor extend. *Bowles v. Russell*, 551 U.S. 205, 214 (2007); *Ultimate Appliance CC v. Kirby Co.*, 601 F.3d 414, 415-16 (6th Cir. 2010). The fact that Brown filed a timely notice of appeal to the wrong court, the United States Court of Appeals for the Eighth Circuit, cannot equitably toll the limitations period for filing appeal. *See Oja v. Dep't of The Army*, 405 F.3d 1349, 1358 (Fed. Cir. 2005) (time provisions of Fed. R. App. P. 4(a) are not subject to equitable tolling). Nor can that notice of appeal be treated as effective in this case. Brown did not move the Eighth Circuit to transfer the timely appeal to this court, and the Eighth Circuit dismissed it. Only then, when no appeal remained pending, did Brown file his amended his notice. The "amended" notice of appeal was in fact a new notice, filed outside the thirty-day time period. Moreover, Brown did not seek an extension of time under Rule 4(a)(5).

Accordingly, we **GRANT** the motion to dismiss for lack of jurisdiction and **DISMISS** this appeal. All other pending motions are **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk